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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.35 of 2019 and
C.M.P.No.24504 of 2019

S.Jothi

...Appellant/Respondent

Vs.

M.Kathiravan

...Respondent/Petitioner

Prayer : Civil Miscellaneous Second Appeal filed under Section 28 (1) of Hindu Marriage Act r/w Section 100 of C.P.C, against the fair and decreetal order dated 26.08.2019 made in C.M.A.No.09 of 2017 on the file of the learned Principal District Court, Namakkal, confirming the fair and decreetal order dated 18.04.2017 made in H.M.O.P.No.133 of 2013 on the file of the learned Sub Court, Namakkal.

For Appellant : Mr.N.Manokaran

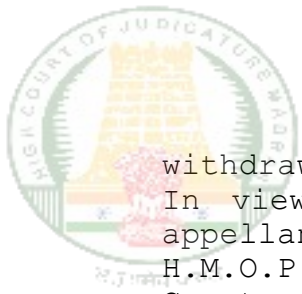
For Respondent : No appearance

J U D G M E N T

The judgment and decree dated 26.08.2019 passed in C.M.A.No.9 of 2017, confirming the judgment and decree dated 18.04.2017 passed by the Trial Court in H.M.O.P.No.133 of 2013, is under challenge in the present civil miscellaneous second appeal.

2. The marriage between the appellant and the respondent was solemnized on 09.09.1998, as per the Hindu Rites and Customs. Two male children born from and out of the wedlock and they were happily living for about seven years. Thereafter, there was a difference of opinion and the appellant left the matrimonial home and both started living separately from August 2008.

3. The fact remains that the appellant wife at the first instance, filed a petition for dissolution of marriage in H.M.O.P.No.221 of 2012 and the said H.M.O.P. was dismissed as



withdrawn on 05.03.2013, at the instance of the appellant wife. In view of the fact that the divorce petition filed by the appellant wife was withdrawn, the respondent husband filed H.M.O.P.No.133 of 2013 for dissolution of marriage. The Trial Court granted decree of divorce and the first Appellate Court also confirmed the same. Both Courts have formed an opinion that the appellant wife at the first instance, filed a petition for divorce and thereafter, she expressed her discretion towards the respondent husband and she was not willing to continue the matrimonial home during the relevant point of time. When the wife filed a petition for divorce and subsequently, withdrawn the petition, the Trial Court and the First Appellate Court had drawn inference that the appellant wife herself was not interested in resuming the matrimonial home.

4. The learned counsel for the appellant also clarified that the petition for dissolution of marriage was filed based on the documents filed in Ex.A3, A4, A5 and A6, with reference to the settlement of properties. However, the fact remains that H.M.O.P. was filed by the appellant wife for dissolution of marriage and the same was withdrawn. The Trial Court made a finding that the appellant and the respondent were living separately for long years and various instances between the parties revealed that those allegations resulted in cruelty. In view of the fact that the spouses are living separately for long years and considering the fact that the respondent could able to establish the ground of cruelty, the decree of divorce was granted.

5. The First Appellate Court also independently considered the facts, documents and evidences and based on the findings of the Trial Court, the First Appellate Court made an observation that the respondent wife has made damage to the character assassination that he is having illicit intimacy with his colleague without evidence. This apart, the respondent wife registered a police complaint and submitted a complaint to the higher officials of the respondent husband. The respondent filed a divorce petition against the appellant wife. Based on these facts and circumstances, the first Appellate Court also arrived a conclusion that the respondent husband proved the element of cruelty and consequently, confirmed the dissolution of marriage granted by the Trial Court.

6. The Substantial question of law raised in the present appeal by the appellant reads as under:

- i) Have not the Courts below committed an error in granting the decree of divorce to the respondent /husband when he being a party at fault is legally debarred from seeking divorce under the matrimonial offence theory as held in



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2013 (6) CTC 560 SC?

ii) Whether Courts below are right in giving undue credence to Ex.A8 and Ex.A9 dated 03.04.2013 made in H.M.O.P.No.221 of 2012 filed by the appellant/wife for divorce, later, it was dismissed for default?

iii) Whether the judgment of the Courts below are perverse for misquoting the registered settlement deeds executed by the respondent in the name of his wife and two sons as an adverse inference against the appellant/wife for granting divorce?

iv) Have not the Courts below committed an error in finding fault with the appellant/wife for character assassination, particularly when the said illegal intimacy of the respondent with his colleague was and is the real cause for the matrimonial dispute between the parties?

7. Perusal of the said substantial questions of law, mostly relates to the factual matrix of the case. Further, it is a concurrent findings given by the Trial Court and the First Appellate Court with reference to the facts which need not be interfered with by this Court, unless there is a patent error. In the present case, the allegations and the counter allegations with reference to the documents and facts were elaborately adjudicated both by the Trial Court as well as the First Appellate Court. Thus, interfering with the factual regarding by this Court is not warranted.

8. In these circumstances, the appellant has not raised any acceptable substantial question of law warranting any further interference from the hands of this Court.

9. Accordingly, the judgment and decree dated 26.08.2019 passed in C.M.A.No.9 of 2017, confirming the judgment and decree dated 18.04.2017 passed by the Trial Court in H.M.O.P.No.133 of 2013, stands confirmed and C.M.S.A.No.35 of 2019, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk



To

1. The Principal District Court,
Namakkal.

2. The Sub Court,
Namakkal.

Copy to:

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate Sr No.18675

C.M.S.A.No.35 of 2019 and
C.M.P.No.24504 of 2019

PA (CO)
PR (16/11/2021)